

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PAUL CHARLES SEEWALD,

Defendant-Appellee.

Supreme Court No. 150146

Court of Appeals No. 314705

Wayne Cir. Ct. No. 12-010198-02-FH

REPLY BRIEF OF APPELLANT PEOPLE OF THE STATE OF MICHIGAN

Bill Schuette
Attorney General

Aaron D. Lindstrom (P72916)
Solicitor General
Counsel of Record

Matthew Schneider (P62190)
Chief Legal Counsel

Bruce H. Edwards (P34983)
Assistant Attorney General
Attorneys for the People
Plaintiff-Appellant
Criminal Appellate Division
P.O. Box 30217
Lansing, MI 48909
517-373-4875

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ARGUMENT

I. The circuit court decision is reviewed de novo, not for an abuse of discretion.

Seewald contends in his counterstatement of standard of review that the circuit court's decision is reviewed for an abuse of discretion. Not so. The *district* court's decision to bindover is generally reviewed for an abuse of discretion, although when, as here, the appeal challenges a court's interpretation of a statute, the reviewing court applies de novo review. *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006). The circuit court's decision is not entitled to any deference because the Court of Appeals and this Court sit in the same position as the circuit court in ruling on a motion to quash. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).

II. The evidence showed a conspiracy to commit a "legal" act.

MCL 750.157a(d) provides that "[a]ny person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy."

Seewald argues that there was no conspiracy to commit a "legal" act because the signatures on the nominating petitions he signed were invalid and unlawful. This is incorrect. Submitting a nominating petition with signatures to place a name on the ballot is undoubtedly a legal act. It can be done in a legal manner, and is not itself prohibited by law. Quite the contrary, it is expressly authorized by law. MCL 168.133.

The signatures on the nominating petitions were from real voters registered in the district and they only became uncountable after Seewald signed them. In fact, Seewald testified:

Q: You believed at the time that these were valid signatures that had been circulated?

A: That is correct.

Q: Just by someone else, not by you?

A: That is correct. [31a]

Thus, the fact that valid voter signatures became uncountable when Seewald and his codefendant Don Yowchuang falsely signed the petitions does not mean it was legally impossible for them to conspire to commit a “legal” act. The defendants agreed to accomplish a lawful act (filing nominating petitions to get Congressman McCotter on the ballot) by unlawful means (falsely signing petitions as the circulators), and the fact that they agreed to use this unlawful means does not shield them from the felony-conspiracy charge. Defendants’ decision to falsely sign the nominating petitions as circulators in violation of MCL 168.544c was simply a necessary but illegal step taken in furtherance of their ultimate lawful objective. The defendants’ admitted agreement falls within the plain language of MCL 750.157a(d).

Further, when the conspiracy was entered into, the signatures were not invalid or unlawful because the actual circulator could have been sought out and asked to sign. Moreover, Seewald and Yowchuang reached their agreement *before* they signed the petitions they had not circulated. Under Michigan law the

defendants' conspiracy was complete when their agreement was reached. *People v Bushard*, 444 Mich 384, 394; 508 NW2d 745 (1993). Seewald signed the petitions *after* the conspiracy was complete. The fact that the voter signatures became uncountable under MCL 168.544c(8) *after* the conspiracy was complete, on account of Seewald and Yowchuang signing the petitions as circulators, does not preclude a finding that they conspired to commit a "legal" act in an illegal manner. Seewald makes no effort to respond to these points.

III. The evidence showed a conspiracy to commit a legal "act."

Seewald also contends that there was no conspiracy to commit a legal "act" given that placing the Congressman's name on the ballot is only something the Secretary of State's office can do. Seewald is splitting hairs. Seewald testified:

A: [] I was asked to sign them.

Q: By whom?

A: Don Yowchuang.

Q: And the purpose in that was to get Mr. McCotter on the ballot?

A: That would be correct.

Q: And that is the reason why it was done?

A: Well, yes, to include these with the petitions. [31a]

Submitting nominating petitions to the Secretary of State in an effort to have the Congressman's name included on the ballot is an "act" within the meaning of MCL 750.157a(d). This legal "act" was taken in furtherance of the agreed upon goal to get the Secretary of State to put the Congressman's name on the ballot.

IV. The People have not attempted to change or mischaracterize the actual charge.

Finally, Seewald continues to argue that the People have somehow changed or mischaracterized the charge. Wrong again.

The charge in this case was that defendants conspired “to submit nominating petitions with valid signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator.” (35a–38a; 70a–73a.) Seewald contends that the signatures were invalid and therefore that he did not conspire to submit valid signatures. But, this argument fails to consider the fact that when the conspiracy was entered into both defendants believed the signatures to be those of qualified voters. (33a; 31a.) Again, Seewald offers no rebuttal to the People’s argument.

CONCLUSION AND RELIEF REQUESTED

Seewald and Yowchuang testified that they intended to commit a legal act. These statements were admitted into evidence at the preliminary examination, and they established probable cause to believe that Seewald and Yowchuang conspired to commit a legal act in an illegal manner. Despite Seewald's claims to the contrary, the admitted goal of the conspiracy was to commit the legal act of filing nominating petitions so the Secretary of State would place Congressman McCotter's name on the ballot. The Court of Appeals majority clearly erred in interpreting the plain statutory text as not reaching the defendants' felony conspiracy. This Court should reverse the Court of Appeals' erroneous decision, reinstate the charge of conspiracy to commit a legal act in an illegal manner, and remand the case to the circuit court for trial.

Respectfully submitted,

Bill Schuette
Attorney General

Aaron D. Lindstrom (P72916)
Solicitor General
Counsel of Record

Matthew Schneider (P62190)
Chief Legal Counsel

/s/Bruce H. Edwards (P34983)

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